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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213527
Party	Defendant Greater Omaha Packing Co., Inc.
Correspondence Address	I. Stephen Samuels Samuels & Hiebert LLC TWO INTERNATIONAL PLACE, 23RD FLOOR BOSTON, MA 02110 UNITED STATES iss@samuelstm.com
Submission	Motion to Consolidate
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Omaha Steaks International, Inc.

Opposer

v.

Greater Omaha Packing Co., Inc.

Applicant

Opposition No. 91213527

Mark: GREATER OMAHA

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U.S. Ser. No. 85897951

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APPLICANT'S MOTION TO CONSOLIDATE

Applicant, Greater Omaha Packing Co., Inc. (hereafter "Defendant") hereby moves to consolidate this opposition proceeding with Cancellation No. 92059455 and Cancellation No. 92059629 pursuant to Fed. R. Civ. P. 42(a) and TBMP §511.

THE FACTS

1. The parties in all three proceedings are identical. Omaha Steaks International, Inc. (hereafter "Plaintiff") is the opposer in this opposition proceeding and is the petitioner in the two cancellation proceedings. Defendant is the applicant in this opposition proceeding and is the registrant in the two cancellation proceedings.
2. The complaints and the answers in all three proceedings are virtually identical.
3. The marks and the registrations relied upon by Plaintiff in each of its three complaints are virtually identical.
4. There are common questions of law and fact in all three proceedings. The complaints and the answers in all three proceedings make manifest that the same primary issue in all three proceedings is the likelihood of confusion as to source.
5. No testimony periods have opened in any of the three proceedings.

6. In their respective Initial Disclosures in all three proceedings, both parties have identified the same testimonial witnesses and the same evidence to be presented during the testimony periods of each of the three proceedings.
7. It is expected that each party's witnesses will testify similarly and that each party will submit similar evidence in each of the three proceedings.
8. In one of the proceedings (Cancellation No. 92059455), Defendant filed a counterclaim petition for cancellation of three of Plaintiff's registrations upon which Plaintiff has asserted heavy reliance in each of its complaints in all three proceedings. Plaintiff's discovery responses have just been received by Defendant. Plaintiff's responses show that the marks covered by Plaintiff's three registrations appear to have been abandoned. Therefore, Defendant's counterclaim petition for cancellation has a reasonably high likelihood of being granted as to all three of Plaintiff's registrations. It is crucial that the likelihood of confusion issue involved in each of the three proceedings be decided by the Board only after the Board makes its decision on Defendant's petition for cancellation of the three registrations which were heavily relied upon by Plaintiff in each of the three complaints.

ARGUMENT

Based on all of the foregoing facts, consolidation will be equally advantageous to both parties, as well as to the Board, because it will avoid unneeded duplication of effort, loss of time, and the extra expense involved in conducting the three proceedings individually. This is especially true because almost all of the trial testimony and the documentary evidence will likely be the same in each proceeding. Failure to consolidate would cause a huge duplication of effort with each witness having to testify similarly in each of the three proceedings; with each party having to present similar evidence in each of the three proceedings; and with each party having to submit similar legal briefs in each of the three proceedings. This would be enormously wasteful, to no one's benefit.

Neither party will suffer any prejudice or inconvenience if the proceedings are consolidated. In fact, every aspect of all three proceedings will be made more convenient for both parties if the three proceedings are consolidated into one proceeding.

After the Board makes its determination on this motion to consolidate, the Board is requested to reset all dates.

Prior to the filing of this motion to consolidate, Defendant's attorney has communicated with Plaintiff's attorney and has requested that Plaintiff stipulate to the granting of this motion to consolidate. Although the Defendant made a good faith effort to resolve the issues with Plaintiff, the parties were unable to resolve their differences regarding the requested stipulation.

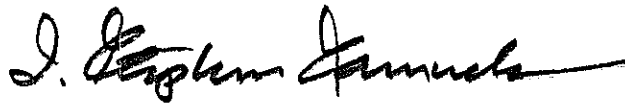
For all of the foregoing reasons, Defendant respectfully requests that the Board order that Opposition No. 91213527, and Cancellation No. 92059455, and Cancellation No. 92059629 be consolidated into a single proceeding, and that the Board reset all dates.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the other party by e-mail on December 3, 2014.



I. Stephen Samuels

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